

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JENARO D. HERNANDEZ,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. 2:24-cv-00982-JHC-TLF

ORDER TO SHOW CAUSE

Petitioner Jenaro D. Hernandez is a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington, pursuant to a judgment and sentence entered in Snohomish County Superior Court. Dkt. 1-1 at 1. Petitioner presents to the Court for filing a petition for writ of habeas corpus under 28 U.S.C. § 2241 asserting that his Snohomish Superior Court's sentence is invalid because former RCW 9.94A.507 is unconstitutional on its face and violates his Sixth Amendment right to a jury trial. *Id.* at 6. He seeks to have this Court review whether state law violates federal law and to "issue an unconditional writ releasing [him] from custody." *Id.* at 7; *see also*, Memorandum, Dkt. 1-2.

Petitioner cites *Castro v. United States*, 540 U.S. 375 (2003) and objects to having this Court review his case under 28 U.S.C. § 2254. *Id.* at 1. The Ninth Circuit has held that "28 U.S.C. § 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment[.]" *White v. Lambert*, 370 F.3d

1 1002, 1009-10 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603
2 F.3d 546 (9th Cir. 2010) (en banc). The *Castro* holding, cited by petitioner, does not
3 apply in this situation because it was related to 28 U.S.C. § 2255 and whether the
4 federal district court improperly applied the successive petition rule. Under *White v.*
5 *Lambert*, the petition for writ of habeas corpus in this case is properly reviewed under §
6 2254. *See Dominguez v. Kernan*, 906 F.3d 1127, 1134-1137 (9th Cir. 2018) (discussing
7 the difference between cases properly brought under 28 U.S.C. § 2241 as opposed to
8 those properly brought under § 2254).

9 To obtain relief under § 2254, a petitioner must demonstrate that each of his
10 claims for federal habeas relief has been properly exhausted in the state courts. 28
11 U.S.C. § 2254(b)-(c). The exhaustion requirement is a matter of comity, intended to
12 afford the state courts “an initial opportunity to pass upon and correct alleged violations
13 of its prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (internal
14 quotation marks and citations omitted). In order to provide the state courts with the
15 requisite “opportunity” to consider his federal claims, a prisoner must “fairly present” his
16 claims to each appropriate state court for review, including a state supreme court with
17 powers of discretionary review. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (citing
18 *Duncan v. Henry*, 513 U.S. 364, 365 (1995), and *O’Sullivan v. Boerckel*, 526 U.S. 838,
19 845 (1999)).

20 In this case, petitioner makes clear that he has not presented the issue raised in
21 his petition to any state appellate court for review. Dkt. 1-1 at 2-7. Petitioner’s claim is
22 therefore unexhausted and not currently eligible for federal habeas review. Accordingly,
23 the Court hereby ORDERS as follows:

1 (1) Petitioner shall SHOW CAUSE, by **August 21, 2024**, why his petition and
2 this action should not be dismissed for failure to exhaust state court remedies. Failure to
3 timely respond to this Order will result in a recommendation that this action be
4 dismissed.

5 (2) The Clerk is directed to NOTE this matter on the Court's motion calendar
6 for **August 21, 2024**, for review of petitioner's response to this Order to Show Cause.

7 (3) The Clerk is directed to RE-NOTE the motion to proceed *in forma*
8 *pauperis* (Dkt. 1) to **August 21, 2024**.

9 (4) The Clerk is directed to send copies of this Order to petitioner.
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11 Dated this 1st day of August, 2024.
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15 Theresa L. Fricke
16 United States Magistrate Judge
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